IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 12338 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?
2	To be referred to the Reporter or not ?
3	Whether their Lordships wish to see the fair copy of the judgment ?
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
5	Whether it is to be circulated to the civil judge ?

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DALSUKHBHAI BECHARBHAI HARIJAN - Petitioner(s)

Versus

DEPUTY COLLECTOR &3 - Respondent(s)

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Appearance :

MR DILIP B RANA for Petitioner(s) : 1,

MR MR MENGADE ASST GOVERNMENT PLEADER for Respondent(s) : 1,

NOTICE SERVED BY DS for Respondent(s) : 2,

MR DJ BHATT for Respondent(s) : 3 - 4.

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 05/09/2005

ORAL JUDGMENT

1.In this petition under Article-227 of the Constitution of India, the petitioner has challenged the legality and validity of the judgment and order passed by the Gujarat Revenue Tribunal dated 26th September, 2003 passed in Revision Application TEN.B.A. No.366 of 1990. The petitioner has also prayed for quashing and setting aside the proceedings initiated by the Mamlatdar and ALT, Khambhat being Tenancy Case No.1 of 2005.

2.It appears that the land bearing Survey No.376 i.e the land in question situated at Khambhat was originally owned by one Fatmaben – daughter of Siddiqbhai Gabadhai and the respondent No.3 herein purchased the said land from the respondent No.4 – original land owner by registered sale deed. It appears from the record that the petitioner was claiming the tenancy rights in the land in question and therefore, the application was given under Section-70-B of the Bombay Tenancy Act (hereinafter referred to as “the Act” for short) on 30th October, 1985 before the Mamlatdar and ALT being Ganot Case No.137 of 1985, and the Mamlatdar and ALT, Khambhat by order dated 1.3.1986 dismissed the said application. Being aggrieved and dissatisfied with the said order passed by the Mamlatdar and ALT, Khambhat dated 1.3.1986, the petitioner preferred the Tenancy Appeal No.364 of 1986 before the Deputy Collector, Kheda and the aid appeal came to be dismissed by order dated 24.11.1986. It appears from the record that the aforesaid orders have not been challenged by the petitioners before the Gujarat Revenue Tribunal and the said orders have become final. Thereafter, the respondent Nos.3 &4 submitted application before the Deputy Collector, Petlad under Section-84-C of the Act for getting possession being Case No.10 of 1988 and the Deputy Collector, Petlad by order dated 11.1.1990 held that the petitioners are in illegal occupation and possession of the land in question and the order came to be passed to remove them. Being aggrieved and dissatisfied with the order passed by the Deputy Collector, Petlad dated 11.1.1990 passed in Case No.10 of 1988, the petitioners preferred Revision Application being TEN.BA No.366 of 1990 before the Gujarat Revenue Tribunal. In the said application, a request was made on behalf of the petitioners to set aside the order passed by the Mamlatdar and ALT dated 1.3.1986 passed in Tenancy Case No.137 of 1985 also. The Gujarat Revenue Tribunal by judgment and order

dated 26.9.2003 dismissed the said revision application by holding that it is not open for the petitioners to challenge the order passed by the Mamlatdar and ALT, Khambhat dated 1.3.1986 passed in Tenancy Case No.137 of 1985, in the said revision application and so far as the order passed by the Deputy Collector, Petlad dated 11.1.1990 passed in Case No.10 of 1988 is concerned, the Tribunal held that in view of the fact that the petitioners have failed to establish their tenancy rights in the land in question and their application under Section-70-B has been dismissed and the said orders have become final, the order passed by the Deputy Collector passed under Section-84-C of the Act, cannot be said to be illegal and / or contrary to the provisions of the Tenancy Act and therefore, dismissed the said revision application.

3. Shri Dilip B.Rana, learned advocate appearing on behalf of the petitioners has vehemently submitted that in view of the fact that Civil Suit is pending before the Civil Court, in which, there is interim order in favour of the petitioners, the Deputy Collector ought not to have passed the order directing the petitioners to hand over possession of the land in question and therefore, it is requested to allow the present Special Civil Application.

4. It is required to be noted that the petitioners filed suit before the Civil Court, Khambhat for temporary injunction restraining the respondent Nos.3 &4 from interfering with their possession. There was no order passed by the Civil Court restraining the competent Tenancy Court from passing any appropriate order in accordance with law, more particularly, Section-84-C of the Act. Even otherwise so far as the proceedings under Tenancy Act are concerned, the Civil Court has no jurisdiction and therefore also, the proceedings before the Deputy Collector under Section-84-C were maintainable and were not barred. In view of the fact that the petitioners have failed to establish their tenancy rights and their application under Section-70-B of the Act came to be dismissed as far as back in the year 1985 confirmed by the Deputy Collector in the year 1986, and the said orders were not challenged, the petitioners were required to be evicted as consequences thereof and the proceedings under Section-84-C of the Act are consequential only. When the petitioners have failed to establish their tenancy rights and on rejection of the application under Section-70-B of the Act, it is rightly held by the Deputy Collector and confirmed by the Gujarat Revenue

Tribunal that the petitioners are in illegal occupation of the land in question and therefore, the Mamlatdar and ALT, Khabhat has rightly initiated the proceedings by way of Tenancy Case No.1 of 2005 which is consequential one only.

5. Considering the aforesaid facts and circumstances of the case, it cannot be said that the proceedings and the orders passed by the Tenancy Authorities confirmed by the Gujarat Revenue Tribunal are in any way illegal and/or perverse and/or without any jurisdiction which warrants any interference at the hands of this Court in exercise of the powers under Article 227 of the Constitution of India.

6. Under the circumstances, there is no substance in the present Special Civil Application and the same is required to be dismissed and the same is accordingly dismissed.

7. Notice is discharged. Interim relief granted earlier stands vacated forthwith.

[M.R.Shah, J.]

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